(16,580.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 15.

CHARLES COUDERT, AS ANCILLARY EXECUTOR OF THE LAST WILL AND TESTAMENT OF RAPHAEL MADRAZO, DECEASED, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 26, 1899.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals, before you or some of you, between The United States, plaintiff in error, and Charles Coudert, as ancillary executor of the last will and testament of Raphael Madrazo, deceased, defendant in error, a manifest error hath happened, to the great damage of the said defendant in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

b UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one to forty, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of the United States, plaintiff in error, against Charles Coudert, as ancillary executor of the last will and testament of Rafael Madrazo, deceased, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern dis-

Seal United States Circuit Court of Appeals, Second Circuit.

trict of New York, in the second circuit, this twenty-third day of April, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-first.

JAMES C. REED, *Clerk.*

[Stamped:] United States circuit court of appeals, second circuit. Filed Apr. 1, 1897. James C. Reed, clerk.

c United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES, Plaintiff in Error,
vs.
CHARLES COUDERT, as Ancillary Executor of Rafael Madrazo, Deceased, Defendant in Error.

Transcript of Record.

In error to the circuit court of the United States for the southern district of New York.

[Stamped:] United States circuit court of appeals, second circuit. Filed Jun. 28, 1895. James C. Reed, clerk.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Charles Coudert, as ancillary executor of Rafael Madrazo, deceased, petitioner, plaintiff, and The United States of America, defendants, a manifest error hath happened to the great damage of the said The United States of America, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the second circuit, together with this writ, so that you may have the same at the city of New York on the 30th day of April, eighteen hundred and ninety-five, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, the 4th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

JOHN A. SHIELDS, *Clerk.*

2 The foregoing writ is hereby allowed.

E. HENRY LACOMBE,
U. S. Circuit Judge,

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from four to thirty-four, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause of The United States, plaintiff in error, against Charles Coudert, as ancillary executor of Rafael Madrazo, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the south-
[SEAL.] ern district of New York, in the second circuit, this second day of May, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

JOHN A. SHIELDS, *Clerk.*

(Endorsed:) U. S. circuit court of appeals for the second circuit. United States *vs.* Charles Coudert, as ancillary executor, &c. Writ of error. Wallace Macfarlane, United States attorney, attorney for U. S. A copy of the within paper has been this day received. N. Y., Apr. 4, 1895. Coudert Brothers, attorneys. To Coudert Brothers, attorneys for def't in error. U. S. circuit court. Filed Apr. 4, 1895. John A. Shields, clerk.

3 U. S. Circuit Court, Southern District of New York.

CHARLES COUDERT, Ancillary Executor of Rafael Madrazo, Deceased, Petitioner,
against
THE UNITED STATES OF AMERICA, Defendant.

The petition of the above-named Charles Coudert respectfully represents to the court and alleges in this behalf, on information and belief, as follows:

First. That on the 16th day of November, 1863, the Spanish bark "Teresita," together with her cargo, then the property of the above-named Rafael Madrazo, and while lying at anchor near the mouth of the Rio Grande river, in the gulf of Mexico, was captured by the United States steamer "Granite City," and brought to the port of

New Orleans for condemnation, for alleged violation of the blockade then held by the military and naval power of the United States over the entrance to the said river.

Second. That pending an adjudication of the question whether or not the said bark "Teresita" had so violated the blockade, the said bark and her cargo were sold by the United States marshal
4 for the eastern district of Louisiana, acting for and in behalf of the said United States, and the proceeds of such sale, after deducting costs, fees, commissions, and other charges, and thus leaving the sum of $10,359.20, was, pursuant to a regulation of the Treasury Department of the United States then in force, deposited by the said marshal in the First National Bank of New Orleans, Louisiana, then a special or designated depositary of public moneys of the United States.

Third. That such proceedings were thereafter had with respect to the said capture in the district court of the United States for the eastern district of Louisiana, before which the said cause was brought by the United States, that the said district court pronounced its judgment or decree declaring the said capture unlawful, and therefore directed restitution of the said vessel and cargo to her said owner, by virtue of which the said Rafael Madrazo became entitled to receive from the said United States the said deposit, as representing and standing in the place and stead of the said vessel and cargo.

Fourth. That notwithstanding the said decision and judgment of the said district court, the said United States, acting through its agents, attorneys and servants, appealed therefrom to the Supreme Court of the United States, and caused a supersedeas or stay of execution of the said judgment or decree to be issued and effected, pending the hearing of the said appeal by the said Supreme Court of the United States.

Fifth. That pending the said appeal to the said the Supreme Court of the United States, the said The First National Bank of New Orleans, in which the said proceeds were deposited as aforesaid, became insolvent, stopped payment on all its obligations and was placed in the hands of a receiver, pursuant to the statute of the United States in such case made and provided.

5 Sixth. That thereafter the said cause came on for hearing in the said the Supreme Court of the United States, at the December term of that court, held in the year 1866, and after due argument and consideration the said the Supreme Court of the United States delivered its opinion and judgment in the said cause, affirming the said judgment or decree of the said the district court of the United States for the eastern district of Louisiana, and thereupon issued its mandate to carry the same into effect by force, whereof the said Rafael Madrazo became again entitled to receive the said deposit from the said United States; but owing to the insolvency and pending liquidation of the affairs of the said bank, as it was pretended by the said United States, acting through its officers aforesaid, the said United States was unable to return the said deposit, and thus refused to comply with the said judgment or decree of restitution.

Seventh. That thereafter the affairs of the said bank were liquidated according to law aforesaid, and the receiver thereof declared several dividends upon the deposits therein at the time of its said insolvency and failure, including the said deposit of the proceeds of the sale of the said vessel and cargo.

Eighth. That the said United States, recognizing the right of the said Rafael Madrazo to the said deposit of the said proceeds, and in part payment thereof, applied the dividends thereon from time to time to the use of, and paid the same to the said Rafael Madrazo during his lifetime, and after his death to his legal representatives.

Ninth. That the said United States is entitled to credits upon the said deposit by payment of dividends just above referred to, as follows: By dividend No. 1, declared and paid May 27, 1871, amounting to $1,553.88; dividend No. 2, declared and paid December
6 22, 1871, amounting to $2,071.84; dividend No. 3, declared and paid April 28, 1871, amounting to $3,107.76; dividend No. 4, declared and paid October 31, 1879, amounting to $517.96, and dividend No. 5, declared and paid September 28, 1882, amounting to $932.33; the total of all which aggregates the sum of $8,133.77, thus leaving a balance of $2,175.43, for which, with interest, the petitioner brings this suit.

Tenth. That said Rafael Madrazo departed this life on or about the 14th day of April, 1877, at Havana, in the island of Cuba, where he then resided, and that his estate, consisting of goods, chattels, choses in action there situated, have been duly administered upon; but no administration of the claim herein made has yet been effected, nor has any payment thereon been made by the United States or any officer thereof.

And the petitioner further alleges as follows:

Eleventh. That on or about the 20th day of July, 1888, the petitioner, in conjunction with one Frederic R. Coudert and one Paul Fuller, duly applied to the surrogate of the county of New York for ancillary letters of administration upon the estate of the said Rafael Madrazo; whereupon, after due proceedings had, such letters of administration were duly granted to the petitioner herein on the 20th day of September, 1888.

Twelfth. That the petitioner has duly qualified as such administrator of the said Rafael Madrazo, and that the said Frederic R. Coudert and Paul Fuller have omitted and declined to qualify as such, whereby the petitioner is the sole administrator in the said behalf.

Thirteenth. That the full name of the said petitioner is Charles Coudert, and that he resides in the southern district of New York.

Wherefore the petitioner prays judgment for the above-
7 named sum of $2,175.43, with interest thereon from the 28th day of September, 1882, besides the costs and disbursements of this suit.

COUDERT BROTHERS,
Attorneys for the Petitioner.

CHS. COUDERT, *Petitioner.*

UNITED STATES OF AMERICA, *Southern District of New York*, } *ss:*

Charles Coudert, being duly sworn, deposes and says that he is the petitioner in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof; and that the same is true of his own knowledge, except the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

CHS. COUDERT.

Sworn to and subscribed before me this 22d day of September, 1888.

[SEAL.] WM. F. RANDEL,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

(Endorsed:) U. S. circuit court, southern dist. of New York. Charles Coudert, ancillary executor of Rafael Madrazo, dec'd, petitioner, *vs.* The United States of America. Petition. Coudert Brothers, attorneys for petitioner, 68 & 70 William street, New York. Service of a copy of the within petition is hereby admitted. N. Y., 24 Sept., 1888. Stephen A. Walker, U. S. attorney. U. S. circuit court. Filed Sep. 24, 1888. John A. Shields, clerk.

8 Registered letter No. 15673. P. O., New York, N. Y.

Received Sep. 24, 1888, of Coudert Bros., 68 William St., a letter addressed to Augustus H. Garland, Washington, D. C.

H. G. PEARSON, *P. M.*
Per M. W.

Circuit Court of the United States, Southern District of New York.

CHARLES COUDERT, as Administrator of Rafael Madrazo, Deceased, }
vs.
THE UNITED STATES. }

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Richard Tone Pettit, being duly sworn, says that he is a clerk in the office of Coudert Brothers, the attorneys for the plaintiff above named; that he is of the age of eighteen years and upwards; that on the 24th day of September, 1888, he deposited in the general post-office in the city of New York, and caused to be registered as provided by law, a true copy of the petition herein, enclosed in a securely closed postpaid wrapper addressed to the Honorable Augustus H. Garland, Attorney General, Washington, District of Columbia.

That annexed hereto is the receipt which deponent received from the registry department of the said general post-office for said letter.

RICHARD TONE PETTIT.

Sworn to before me this 25th day of September, 1888.
WM. F. RANDEL,
Notary Public, Kings County.
[SEAL.]

Certificate filed in N. Y. Co.

9 (Endorsed:) U. S. circuit court, southern district of N. Y. Charles Coudert, as adm'r of Rafael Madrazo, *vs.* The United States. Aff't of mailing copy petition to Attorney General. Coudert Bros., 68 & 70 Wm. St., N. Y. city, N. Y. U. S. circuit court. Filed Sep. 26, 1888. John A. Shields, clerk.

Circuit Court of the United States for the Southern District of New York.

CHARLES COUDERT, as Executor of Rafael Madrazo, Deceased, Petitioner,
against
THE UNITED STATES OF AMERICA, Defendant.

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York,* } *ss.:*

Richard Tone Pettit, being duly sworn, says that he is a clerk in the office of Coudert Brothers, the attorneys for the petitioner above named, and is of the age of eighteen years and upwards.

That on the 24th day of September, 1888, he duly served the petition herein on Stephen A. Walker, Esq., United States district attorney for the southern district of New York, by delivering a true copy of said petition to and leaving the same with a person in and in charge of the office of the said district attorney.

RICHARD TONE PETTIT.

Sworn to before me this 29th day of September, 1888.
WM. F. RANDEL,
Notary Public, Kings County.
[SEAL.]

Certificate filed in N. Y. Co.

10 (Endorsed:) U. S. circuit court, southern district of N. Y. Charles Coudert, as ancillary executor of Rafael Madrazo, dec'd, against The United States of America. Aff't of service of copy of petition on U. S. dist. att'y for southern district of N. Y. Coudert Brothers, 68 & 70 William street, New York city. U. S. circuit court. Filed Oct. 1, 1888. John A. Shields, clerk.

U. S. Circuit Court, Southern District of New York.

CHARLES COUDERT, Ancillary Executor of Rafael Madrazo, Deceased,
against
THE UNITED STATES OF AMERICA.

The United States of America, by Stephen A. Walker, United States attorney for the southern district of New York, for its answer

to the petition of Charles Coudert, ancillary executor of Rafael Madrazo, deceased, alleges:

That it has no knowledge or information as to any of the allegations of said petition, and it, therefore, denies the same and every part thereof.

Wherefore it demands that said petition be dismissed with costs.

STEPHEN A. WALKER,
U. S. Attorney.

(Endorsed:) U. S. circuit court, southern district of New York. Chas. Coudert, ancillary executor of Rafael Madrazo, deceased,
11 *versus* The United States of America. Answer. Stephen A. Walker, United States attorney, attorney for defendant. A copy of the within paper has been this day received. N. Y., Mar. 9, 1889. Coudert Brothers, attorneys. U. S. circuit court. Filed Mar. 11, 1889. John A. Shields, clerk. Judgment for plaintiff for full amount claimed. Counsel may submit findings on five days' notice. Oct. 10, 1894. E. H. Lacombe. U. S. circuit court. Filed Oct. 10, 1891. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

CHARLES COUDERT, Ancillary Executor of Rafael Madrazo, Deceased, Petitioner,
against
THE UNITED STATES OF AMERICA, Defendant.

This cause was duly tried before me without a jury. From the testimony taken and the stipulation as to facts, I make the following

Findings of Fact.

First. That on the 16th day of November, 1863, the Spanish bark "Teresita," together with her cargo, then the property of the above-named Rafael Madrazo, and while lying at anchor near the mouth of the Rio Grande river, in the gulf of Mexico, was captured by the United States steamer "Granite City" and brought to the port of New Orleans for condemnation, for alleged violation of the blockade then held by the military and naval power of the United States over the entrance to the said river.

12 Second. That pending an adjudication of the question whether or not the said bark "Teresita" had so violated the blockade, the said bark and her cargo were sold by the United States marshal for the eastern district of Louisiana, acting for and in behalf of the said United States, and the proceeds of such sale, after deducting costs, fees, commissions and other charges, and thus leaving the sum of $10,359.20, was, pursuant to a regulation of the Treasury Department of the United States then in force, deposited by the said marshal in the First National Bank of New Orleans, Louisiana, then a special or designated depositary of public moneys of the United States.

Third. That such proceedings were thereafter had with respect to the said capture in the district court of the United States for the eastern district of Louisiana, before which the said cause was brought by the United States, that the said district court pronounced its judgment or decree declaring the said capture unlawful, and therefore directed restitution of the said vessel and cargo to her said owner, by virtue of which the said Rafael Madrazo became entitled to receive from the said United States the said deposit, as representing and standing in the place and stead of the said vessel and cargo.

Fourth. That notwithstanding the said decision and judgment of the said district court, the said United States, acting through its agents, attorneys and servants, appealed therefrom to the Supreme Court of the United States, and caused a supersedeas or stay of execution of the said judgment or decree to be issued and effected, pending the hearing of the said appeal by the said Supreme Court of the United States.

Fifth. That thereafter the said cause came on for hearing in the said the Supreme Court of the United States, at the Decem-
13 ber term of that court, held in the year 1866, and after due argument and consideration the said the Supreme Court of the United States delivered its opinion and judgment in the said cause, affirming the said judgment or decree of the said the district court of the United States for the eastern district of Louisiana, and thereupon issued its mandate to carry the same into effect by force, whereof the said Rafael Madrazo became again entitled to receive the said deposit from the said United States; but owing to the insolvency and pending litigation of the affairs of the said bank, as it was pretended by the said United States, acting through its officers aforesaid, the said United States was unable to return the said deposit, and thus refused to comply with the said judgment or decree of restitution.

Sixth. That pending the said appeal to the said the Supreme Court of the United States, the said The First National Bank of New Orleans, in which the said proceeds were deposited as aforesaid, became insolvent, stopped payment on all its obligations and was placed in the hands of a receiver, pursuant to the statute of the United States in such case made and provided.

Seventh. That thereafter the affairs of the said bank were liquidated according to law aforesaid, and the receiver thereof declared several dividends upon the deposits therein at the time of its said insolvency and failure, including the said deposit of the proceeds of the sale of the said vessel and cargo.

That the said United States, recognizing the right of the said Rafael Madrazo to the said deposit of the said proceeds, and in part payment thereof, applied the dividends thereon from time to time to the use of, and paid the same to the said Rafael Madrazo during his lifetime, and after his death to his legal representatives.

That the receiver paid on behalf of said claim to the said
14 Rafael Madrazo during his lifetime, and to his representatives after his death, the following sums of money on account of

the sum due by the United States on account of the proceeds arising from such unlawful capture and the subsequent sale of the vessel:

May 1, 1871	$1,553.88
Dec. 22, "	2,071.84
Ap'l 28, 1874	3,107.76
Oct. 31, 1879	517.96
Sept. 28, 1882	932.33
	$8,183 77

which leaves a balance of a sum of $2,175.43.

Eighth. That the receiver of the said First national bank has disposed of all the property of said bank which came into his hands, and that no more property will come into his hands which can be applied on account of the proceeds of the sale of the said vessel.

Ninth. That said Rafael Madrazo departed this life on or about the 14th day of April, 1877, at Havana, in the island of Cuba, where he then resided, and that his estate, consisting of goods, chattels, choses in action there situated, have been duly administered upon.

Tenth. That on or about the 20th day of July, 1888, the petitioner, in conjunction with one Frederic R. Coudert and one Paul Fuller, duly applied to the surrogate of the county of New York for ancillary letters of administration upon the estate of the said Rafael Madrazo; whereupon, after due proceedings had, such letters of administration were duly granted to the petitioner herein on the 20th day of September, 1888.

Eleventh. That the petitioner has duly qualified as such administrator of the said Rafael Madrazo, and that the said Frederic R. Coudert and Paul Fuller have omitted and declined to qualify as such, whereby the petitioner is the sole administrator in the said behalf.

Twelfth. That the full name of the said petitioner is Charles Coudert, and that he resides in the southern district of New York.

Thirteenth. The interest on the said sum of $2,175.43 from September 28th, 1882, amounts to the sum of $1,573.56.

From the foregoing facts I find as a

Conclusion of Law.

That the said petitioner, Charles Coudert, ancillary executor of Rafael Madrazo, deceased, is entitled to judgment against the United States of America for the sum of $3,748.98, with the costs and disbursements of this action.

Dated New York, October 24, 1894.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) United States circuit court, southern district of New York. Charles Coudert, ancillary executor of Rafael Madrazo, deceased, petitioner, against The United States of America, defendant. Findings. Coudert Brothers, attorneys for petitioner, 68 & 70 Wil-

liam street, New York. To Wallace Macfarlane, Esq., U. S. district attorney. You will please take notice that the enclosed findings of fact will be presented to Hon. E. H. Lacombe, judge of this court, on October 23, 1894, at 11 o'clock a. m. October 17, 1894. Coudert Brothers, petitioner's att'ys. Service is admitted of a copy of the within findings and notice. Oct. 17, 1894. Wallace Macfarlane, attorney for def't. U. S. circuit court. Filed Oct. 24, 1894. John A. Shields, clerk.

16 United States Circuit Court, Southern District of New York.

CHARLES COUDERT, as Ancillary Executor of Rafael Madrazo, Deceased, Petitioner,
against
THE UNITED STATES OF AMERICA, Defendant.

Judgment, November 5th, 1894.

The issues in this action having been duly brought on for trial in this court, and the case having been duly submitted by the attorneys for the petitioner and defendant to the Hon. Judge Lacombe, on the 18th day of June, 1894, and the said judge having on the 10th day of October, 1894, rendered a decision in favor of the petitioner for the full amount claimed, and the said judge having on the 24th day of October, 1894, signed his findings, wherein it is recited as a conclusion of law "that the petitioner, Charles Coudert, ancillary executor of Rafael Madrazo, deceased, is entitled to judgment against the United States of America for the sum of $3,748.98, with the costs and disbursements of this action," and the said disbursements—the plaintiff not having taxed any costs against the defendant—having been duly taxed on the second day of November, 1894, in the sum of sixty-nine and $\frac{9}{100}$ dollars ($69.09):

Now, on motion of Messrs. Coudert Brothers, attorneys for the petitioner—

17 It is ordered, adjudged and decreed that the said petitioner, Charles Coudert, as ancillary executor of Rafael Madrazo, deceased, recover of the defendant, The United States of America, the sum of three thousand seven hundred and forty-eight dollars and ninety-eight cents, the amount claimed, together with the sum of sixty-nine dollars and nine cents disbursements, amounting in the aggregate to the sum of three thousand eight hundred and eighteen dollars and seven cents ($3,818.07).

Judgment signed this fifth day of November, A. D. 1894.

JOHN A. SHIELDS, *Clerk*.

(Endorsed:) United States circuit court, southern district of New York. Charles Coudert, as ancillary executor of Rafael Madrazo, deceased, petitioner, against The United States of America, defendant. Judgment Nov. 5th, 1894. Coudert Brothers, attorneys for petitioner, 68 & 70 William street, New York. U. S. circuit court. Filed Nov. 5, 1894, 3.42 p. m. John A. Shields, clerk.

At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the 15th day of March, in the year of our Lord one thousand eight hundred and ninety-five.

Present: The Honorable E. Henry Lacombe, circuit judge.

CHARLES COUDERT, Ancillary Executor of Rafael Madrazo, Deceased, Petitioner,
vs.
THE UNITED STATES OF AMERICA, Defendant.

A motion to amend the findings of fact herein coming on to be heard, upon all the proceedings had herein, and upon the affidavit and motion papers filed on behalf of defendants, after hearing Wallace Macfarlane, United States attorney, in favor of the motion, and Coudert Brothers, attorneys for plaintiff, opposing—

It is ordered, that the findings of fact, signed and filed herein October 24th, 1894, be and they are amended *nunc pro tunc:*

1. By striking out in the second finding, line 5, the words "acting for and on behalf of the said United States," and substituting therefor "by virtue of an order of the U. S. district court, eastern district of Louisiana, dated August 23, 1864, rendered in a suit in admiralty for the condemnation and forfeiture of said vessel and her cargo, which was commenced in said court on December 16, 1863, and in which The United States of America were libellants."

2. By amending the end of the second finding, by inserting the words "to await the further orders of the court."

3. By amending the third finding, line 9, by striking out therefrom the words "from the said United States."

4. By amending the fifth finding, line 11, by striking out the words "from the said United States."

5. By amending the fifth finding, lines 12, 13, 14 and 15, by striking out the words "as it was pretended by the said United States, acting through its officers aforesaid, the said United States."

6. By amending the seventh finding by striking out the second paragraph thereof, being the words, "That the said United States, recognizing the right of the said Rafael Madrazo to the said deposit of said proceeds and in part payment thereof, applied the dividends thereon from time to time to the use of, and paid the same to the said Rafael Madrazo during his lifetime, and after his death to his legal representatives."

7. By amending the seventh finding, line 16, by striking out the words "account of the sum due by the United States on."

So that the findings of fact herein be and they are filed *nunc pro tunc* to read as follows:

First. That on the 16th day of November, 1863, the Spanish bark "Teresita," together with her cargo, then the property of the above-

named Rafael Madrazo, and while lying at anchor near the
20 mouth of the Rio Grande river, in the gulf of Mexico, was captured by the United States steamer "Granite City," and brought to the port of New Orleans for condemnation, for alleged violation of the blockade then held by the military and naval power of the United States over the entrance to the said river.

Second. That pending an adjudication of the question whether or not the bark "Teresita" had so violated the blockade, the said bark and her cargo *was* sold by the U. S. marshal for the eastern district of Louisiana, by virtue of an order of the U. S. district court for the eastern district of Louisiana, dated August 23, 1864, rendered in a suit in admiralty for the condemnation and forfeiture of said vessel and her cargo, which was commenced in said court on December 16, 1863, and in which the United States of America were libellants, and the proceeds of such sale after deducting costs, fees, commissions and other charges, and thus leaving the sum of $10,359.20, was pursuant to a regulation of the Treasury Department of the United States then in force, deposited by the said marshal in the First National Bank of New Orleans, Louisiana, then a special or designated depositary of public moneys of the United States, to await the further orders of the court.

Third. That such proceedings were thereafter had with respect to the said capture in the district court of the United States for the eastern district of Louisiana, before which the said cause was brought by the United States, that the said district court pronounced its judgment or decree, declaring the said capture unlawful, and therefore directed restitution of the said vessel and cargo to her said owner, by virtue of which the said Rafael Madrazo became entitled to receive the said deposit, as representing and standing in the place and stead of the said vessel and cargo.

Fourth. That notwithstanding the said decision and judg-
21 ment of the said district court, the said United States, acting through its agents, attorneys and servants, appealed therefrom to the Supreme Court of the United States, and caused a supersedeas or stay of execution of the said judgment or decree to be issued and effected, pending the hearing of the said appeal by the said Supreme Court of the United States.

Fifth. That thereafter the said cause came on for hearing in the said the Supreme Court of the United States, at the December term of that court held in the year 1866, and after due argument and consideration the said the Supreme Court of the United States delivered its opinion and judgment in the said cause, affirming the said judgment or decree of the said the district court of the United States for the eastern district of Louisiana, and thereupon issued its mandate to carry the same into effect; by force whereof the said Rafael Madrazo became again entitled to receive the said deposit; but owing to the insolvency and pending litigation, the said bank was unable to return the said deposit, and thus refused to comply with the said judgment or decree of restitution.

Sixth. That pending the said appeal to the said the Supreme Court of the United States, the said The First National Bank of New

Orleans, in which the said proceeds were deposited as aforesaid, became insolvent, stopped payment on all its obligations and was placed in the hands of a receiver, pursuant to the statute of the United States in such case made and provided.

Seventh. That thereafter the affairs of the said bank were liquidated according to law aforesaid, and the receiver thereof declared several dividends upon the deposits therein at the time of the said insolvency and failure, including the said deposit of the proceeds of the sale of the said vessel and cargo. That the receiver paid on behalf of said claim to the said Rafael Madrazo during his
22 lifetime, and to his representatives after his death, the following sums of money on account of the proceeds arising from such unlawful capture and the subsequent sale of the vessel:

May 1, 1871	$1,553 88
December 22, 1871	2,071 84
April 28, 1874	3,107 76
October 31, 1879	517 96
September 28, 1882	932 33
	$8,183 77

which leaves a balance of a sum of $2,175.43.

Eighth. That the receiver of the said First national bank has disposed of all the property of the said bank which came into his hands, and that no more property will come into his hands which can be applied on account of the proceeds of the sale of the said vessel.

Ninth. That said Rafael Madrazo departed this life on or about the 14th day of April, 1877, at Havana, in the island of Cuba, where he then resided, and that his estate, consisting of goods, chattels, and choses in action there situated, have been duly administered upon.

Tenth. That on or about the 20th of July, 1883, the petitioner, in conjunction with one Frederic R. Coudert and one Paul Fuller, duly applied to the surrogate of the county of New York for ancillary letters of administration upon the estate of the said Rafael Madrazo; whereupon, after due proceedings had, such letters of administration were duly granted to the petitioner herein on the 20th day of September, 1888.

Eleventh. That the petitioner has duly qualified as such administrator of the said Rafael Madrazo, and that the said Frederic R. Coudert and Paul Fuller have omitted and declined to qualify as such, whereby the petitioner is the sole administrator in the said behalf.

23 Twelfth. That the full name of the said petitioner is Charles Coudert, and that he resides in the southern district of New York.

Thirteenth. The interest of the said sum of $2,175.43, from September 28, 1882, amounts to the sum of $1,573.56.

From the foregoing facts I find as a conclusion of law that the said petitioner, Charles Coudert, ancillary executor of Rafael Madrazo,

deceased, is entitled to judgment against the United States of America for the sum of $3,748.98, with the costs and disbursements of this action.

March 30th, 1895.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. Charles Coudert, as ancillary executor, &c., *versus* United States. Order amending findings of fact. Wallace Macfarlane, United States attorney, attorney for defendant. U. S. circuit court. Filed Mar. 30, 1895. John A. Shields, clerk.

24 United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, Plaintiffs in Error,
vs.
CHARLES COUDERT, as Ancillary Executor of Rafael Madrazo, Deceased, Defendant in Error.
} Assignment of Errors.

Afterwards, to wit, on the 4th day of April, 1895, before the judges of the said court, at the city of New York, come the said plaintiffs in error by Wallace Macfarlane, United States attorney for the southern district of New York, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears:

1st. That the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiffs in error; and

2nd. That the said judgment was not given for the said plaintiffs in error against the said defendant in error.

3rd. That the U. S. circuit court for the southern district of New York had no jurisdiction of the action, as it was one "sounding in tort."

4th. That the United States of America were held liable for the tort or torts of their alleged agents.

5th. That neither the petition nor the findings state any
25 good cause of action against the United States of America, nor do they sustain the judgment.

6th. That it appears from the petition and the findings of fact that the alleged cause of action was barred by the statutory period of limitation of six years.

7th. That the findings and the judgment award interest against the plaintiffs in error.

And the said plaintiffs in error pray that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled and altogether held for

nothing, and that they, the said plaintiffs in error, may be restored to all things which they have lost by occasion of said judgment, etc.

WALLACE MACFARLANE,
U. S. Attorney, Attorney for Plaintiffs in Error,
Room 50, P. O. Building, N. Y. City.

(Endorsed:) U. S. circuit court of appeals for the second circuit. United States *vs.* Charles Coudert, as ancillary executor, &c. Assignment of errors. Wallace Macfarlane, United States attorney, attorney for U. S. To Coudert Brothers, attorneys for def't in error. U. S. circuit court. Filed Apr. 4, 1895. John A. Shields, clerk.

26 UNITED STATES OF AMERICA, *ss:*

By the Honorable E. Henry Lacombe, one of the judges of the United States circuit court of appeals for the second circuit.

To Charles Coudert, as ancillary executor of Rafael Madrazo, deceased, Greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals for the second circuit, to be holden at the city of New York on the 30th day of April, eighteen hundred and ninety-five, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the southern district of New York, wherein The United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand in the city of New York, the 4th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

E. HENRY LACOMBE,
U. S Circuit Judge.

WALLACE MACFARLANE,
U. S. Attorney, Attorney for Plaintiffs in Error,
Room 50, Post-office Building, New York City.

(Endorsed:) U. S. circuit court of appeals for the second circuit. United States *vs.* Charles Coudert, as ancillary executor, &c. Citation. Wallace Macfarlane, United States attorney, attorney for U. S. To Coudert Brothers, attorneys for def't in error. A copy of the within paper has been this day received. N. Y., Apr. 4, 1895. Coudert Brothers, attorneys. U. S. circuit court. Filed Apr. 4, 1895. John A. Shields, clerk.

27 United States Circuit Court of Appeals for the Second Circuit, October Term, 1895.

Submitted February 20, 1896; decided April 7, 1896.

THE UNITED STATES, Plaintiff in Error,
vs.
CHARLES COUDERT, as Ancillary Executor of Raphael Madrazo, Deceased, Defendant in Error.

No. 74. In Error to the Circuit Court of the United States for the Southern District of New York.

Before Associate Justice Peckham and Judges Wallace and Shipman.

SHIPMAN, *Circuit Judge:*

Charles Coudert, as ancillary executor of Rafael Madrazo, brought a petition against the United States in the circuit court of the United States for the southern district of New York, under the act of March, 3, 1887 (24 Stat. at Large, 505), known as "the Tucker act," to recover a sum of money alleged to be due to the testator's estate from the United States. The writ of error to this court was brought to review the judgment of the circuit court in favor of the petitioner.

The following statement of the facts upon which the claim was based is admitted to be substantially correct:

In November, 1863, the United States vessel *Granite City* seized the Spanish bark *Teresita*, then the property of Rafael Madrazo, in the gulf of Mexico, as a blockade-runner, and brought the *Teresita* to New Orleans for condemnation, for alleged violation of the blockade by the military and naval power of the United States over the entrance to the Rio Grande river. Legal proceedings

28 for condemnation and forfeiture of the vessel as a prize were duly begun in the district court for the eastern district of Louisiana. During the progress of the condemnation proceedings and by virtue of an order of the district court for the eastern district of Louisiana, dated August 23, 1864, rendered in a suit in admiralty for the condemnation and forfeiture of said vessel and her cargo, which was commenced in said court on December 16, 1863, and in which The United States of America were libellants, the said bark and her cargo were sold by the United States marshal for the eastern district of Louisiana. The proceeds of such sale, amounting to $10,359.20, after deducting costs and other charges, were deposited by the marshal in the First National Bank of New Orleans, then a special or designated depositary of public moneys of the United States, to await the further orders of the court.

The district court thereafter decided in favor of the claimant against the United States. The United States appealed to the Supreme Court of the United States, obtaining a supersedeas, pending the appeal. At the December term of the Supreme Court in 1866, a decision was rendered affirming the decree of the district court in favor of the claimant and against the United States, and restitution of the vessel and cargo was directed. The *Teresita* (5 Wall., 180).

Pending the appeal, the First National Bank of New Orleans, in

which the proceeds of the sale of the *Teresita* had been deposited, failed and was placed in the hands of a receiver pursuant to law. Thereafter, in liquidating the affairs of the bank, the receiver paid to Madrazo during his lifetime, and to his representatives after his death, dividends amounting in all to $8,183.77. The first payment was made on May 1, 1871, and the last on September 28, 1882. Madrazo died in Cuba on the 14th day of April, 1877, and on the 20th day of September, 1888, ancillary letters of administration were issued in the county of New York to the defendant in error.

The receiver of the bank had no further assets in his hands
29 applicable to the payment of this claim after the payment of September 28, 1882, and the petition in this suit was filed on September 24, 1888, to recover a sum equal to the balance of the proceeds of the sale of the *Teresita*, after deducting the payments made by the receiver of the bank; that is to say, for the sum of $2,175.43. The circuit court awarded judgment to the petitioner, with interest from the 28th day of September, 1882.

It manifestly appears that the questions were so presented to the circuit court that the disposition of the case was considered to be a matter of routine.

The theory of the petitioner is that inasmuch as the final decree in the prize case directed the Government to make restitution of the *Teresita* and her cargo, and as the decree has not been fully complied with, a claim sounding in contract has arisen out of said decree, in favor of the decedent and his estate, against the Government. This theory omits consideration of the facts that the vessel and her cargo were sold by order of the district court, that the proceeds of such sale remained subject to its order in lieu of the vessel and cargo, that the fund was not deposited in the Treasury of the United States and that the Government is not responsible for its diminution. A similar claim against the United States, arising out of the failure of a bank in which the proceeds from the sale of cotton, seized under the confiscation act, had been deposited, was examined by the Supreme Court in Branch *v.* U. S. (100 U. S., 673). The suit for condemnation of the cotton had been dismissed and judgment had been entered for the defendants, who thereupon brought suit against the United States to recover the unpaid amount of the original deposit. The Supreme Court held that the money which had been deposited belonged for the time to the district court as a trust fund, that it was not paid into the Treasury, and that therefore the claimant was not entitled to recover.

In this case, also, the entire proceedings in regard to the sale of vessels and cargo and their proceeds having been taken by the district court, the Government is not responsible any more than was the petitioner or the decedent, for any calamity to the fund.
30 The decree of restitution of the vessel and cargo was a decree for whatever remained of the fund which was a substitute for the vessel and cargo.

The petitioner insists that no writ of error lies to this court from the judgment of the circuit court in an action brought against the Government of the United States under the provisions of the act of

March 3, 1887. It was settled in U. S. *v.* Davis (131 U. S., 36) that an appeal or writ of error lay to the Supreme Court from a judgment against the United States rendered under the jurisdiction conferred upon district or circuit courts by that act, and the contention of the petitioner is that as the Tucker act alone furnishes the district or circuit courts with jurisdiction to entertain actions against the United States, it alone controls the right of appeal or review.

The act of March 3, 1891, was intended to be a comprehensive statute which should regulate the jurisdiction of the Supreme Court by appeal or writ of error from the district and circuit courts. The fifth section provides six classes of cases in which appeals or writs of error may be taken directly to the Supreme Court from those courts and which do not include cases arising therein under the act of March 3, 1887. Section 6 provides that the circuit courts of appeals shall exercise appellate jurisdiction to review final decisions in the district and existing circuit courts in all cases other than those provided in the fifth section unless otherwise provided by law, and section 14 provided that "all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding sections five and six of this act" were repealed. The Supreme Court in Lau Ow Ben *v.* U. S. (144 U. S., 47) has shown that the words of section six "unless otherwise provided by law" were not intended to limit the effect of the general repealing provisions of section fourteen, but "were manifestly inserted out of abundant caution, in order that any qualification of the jurisdiction by contemporaneous or subsequent acts should not be construed as taking it away except when
31 expressly so provided. Implied repeals were intended to be thereby guarded against. To hold that the words referred to prior laws would defeat the purpose of the act and be inconsistent with its context and its repealing clause."

Immediately after the passage of the act of March 3, 1891, some uncertainty existed in the minds of learned counsel as to which court an appeal or writ of error should be taken in cases arising under the "Tucker act," but this uncertainty has disappeared.

The judgment of the circuit court is reversed.

Wallace Macfarlane, United States attorney, for the plaintiff in error.

Joseph Kling, for the defendant in error.

32 At a stated term of the United States circuit court of appeals for the second circuit, held at the United States courtrooms, in the city of New York, on the 11th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Associate Justice R. W. Peckham and Circuit Judges Wm. J. Wallace and Nathaniel Shipman.

THE UNITED STATES OF AMERICA, Plaintiffs in Error,
vs.
CHARLES COUDERT, Ancillary Executor of Rafael Madrazo, Deceased, Defendant in Error.

The writ of error to the circuit court of the United States for the southern district of New York to review the judgment of said court entered herein on the 5th day of November, 1894, having come on to be heard, and due deliberation having been had thereon—

Now, on motion of Wallace Macfarlane, U. S. attorney, of counsel for The United States, plaintiffs in error, it is—

Ordered that the decision aforesaid be, and the same hereby is, in all things reversed, with costs to plaintiffs in error in both courts; and it is further—

Ordered that a mandate issue to the circuit court of the United States for the southern district of New York, directing that court to proceed*ing* in accordance with the opinion of this court, and to award judgment in favor of the plaintiffs in error.

W. J. W.
N. S.

33 (Endorsed:) U. S. circuit court of appeals for the second circuit. United States *vs.* Charles Coudert, as ancillary executor, &c. Order for mandate. Wallace Macfarlane, United States attorney, attorney for United States. United States circuit court of appeals, second circuit. Filed May 12, 1896. James C. Reed, clerk.

34 United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES, Plaintiff in Error,
against
CHARLES COUDERT, as Ancillary Executor of Rafael Madrazo, Deceased, Defendant in Error.

Afterwards, to wit, on the twenty-fifth day of March, one thousand eight hundred and ninety-seven, comes the said Charles Coudert and saith that in the record and proceedings in the above-entitled action there is manifest error in this, to wit:

That the court reversed the judgment of the circuit court of the United States for the southern district of New York, and directed said court to award judgment in favor of the above-named plaintiff in error, whereas of right and by the law of the land the said writ of error should have been dismissed or the said judgment affirmed.

By reason of the aforesaid error the said defendant in error has sustained great damage, and he prays that the said error be reversed and annulled, and that he be restored to all rights which he has lost by the said error.

CHARLES COUDERT,
As Ancillary Executor, &c.,
By COUDERT BROTHERS,
His Solicitors.

35 (Endorsed:) United States circuit court of appeals for the second circuit. The United States, plaintiff in error, *vs.* Charles Coudert, as ancillary executor, &c., defendant in error. Assignment of errors. Coudert Brothers, attorneys for defendant in error, 110 Broadway, New York. United States circuit court of appeals, second circuit. Filed Mar. 25, 1897. James C. Reed, clerk.

36 To the honorable the Chief Justice of the United States and the associate justices of the Supreme Court of the United States:

The petition of Charles Coudert, as ancillary executor of the last will and testament of Raphael Madrazo, respectfully shows to your honors:

That your petitioner, as executor aforesaid, on the twenty-second day of September, 1888, brought an action in the circuit court of the United States for the southern district of New York against the United States of America to recover the sum of two thousand one hundred and seventy-five dollars, the value, less payments applied on account thereof, of the Spanish bark Teresita, which had been seized by the United States authorities for alleged violation of the neutrality laws, and which had, after trial, been ordered to be restored to the possession of the said Raphael Madrazo; which said vessel had in the meantime been appropriated and sold by the United States; in which action the United States appeared and answered.

That the action brought by your petitioner was duly brought to trial before the Honorable E. Henry Lacombe, who duly filed his findings of fact and conclusion of law, in which he found that the facts stated in the petition of your petitioner were true, and that your petitioner was entitled to judgment against the United States for the sum of three thousand seven hundred and forty-eight dollars and ninety-eight cents, with the costs and disbursements of said action.

37 That costs were subsequently taxed and judgment was duly rendered in the said action on the fifth day of November, 1894, against the United States of America for the sum of three thousand eight hundred and eighteen dollars and seven cents.

That the United States of America, for the purpose of reviewing said judgment, sued out a writ of error from the United States circuit court of appeals for the second circuit; which said writ of error was duly allowed and the record of said cause duly transmitted to the said United States circuit court of appeals.

That the said cause duly came on to be heard by the said United States circuit court of appeals; which said court ordered that the said judgment of the said circuit court of the United States for the southern district of New York be reversed; whereupon judgment was entered in the said action in the said United States circuit court of appeals for the second circuit reversing the judgment of the said circuit court and directing said court to award judgment in favor of the said plaintiffs in error.

And your petitioner shows that in the record and proceedings had in said United States circuit court of appeals manifest errors have happened, to the great damage of your petitioner, as appears by the assignment of errors filed in the said action in the office of the clerk of the United States circuit court of appeals for the second circuit, and your petitioner is desirous that the Supreme Court of the United States should correct that error and to that end
38 cause a writ of error to be issued.

Wherefore your petitioner prays that a writ of error in the Supreme Court of the United States may be issued in the said action, and that the judgment rendered therein and the record therein and all proceedings concerning the same be sent to the Chief Justice of the United States and the associate justices of the Supreme Court of the United States.

And your petitioner will ever pray, &c.

Dated New York, March 26th, 1897.

CHARLES COUDERT,
As Ancillary Executor of the Last Will and Testament of Rafael Madrazo, Petitioner,
By JOSEPH KLING,
His Counsel, and
COUDERT BROTHERS,
Solicitors.

JOSEPH KLING,
Of Counsel for Petitioner.

(Endorsed:) United States circuit court of appeals for the second circuit. The United States, plaintiff in error, *vs.* Charles Coudert, as ancillary executor, &c., defendant in error. Petition. Coudert Brothers, attorneys for defendant in error, 100 Broadway, New York. United States circuit court of appeals, second circuit. Filed Apr. 1, 1897. James C. Reed, clerk.

39 Know all men by these presents that we, Paul Fuller, residing at No. 30 Washington square north, in the city, county, and State of New York, and Frederic R. Coudert, Jr., residing at No. 13 East 45th street, in the city, county, and State of New York, are held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars, to be paid to the United States of America; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our personal representatives, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 18th day of March, one thousand eight hundred and ninety-seven.

Whereas Charles Coudert, as ancillary executor of Rafael Madrazo, deceased, as plaintiff in error, has prosecuted an appeal to the Supreme Court of the United States from a judgment of the United States circuit court of appeals for the second circuit, bearing date May 11, 1896, in an action wherein the said United States of America

was plaintiff in error and the said Charles Coudert, as ancillary executor, as aforesaid, was defendant in error:

Now, therefore, the condition of the above obligation is such that if the above-named plaintiff in error shall prosecute this writ of error to *the* effect and pay all costs which may be awarded against him, as such plaintiff in error, if his appeal is not sustained, then this obligation to be void; otherwise to remain in full force and effect.

40 FREDERIC R. COUDERT, JR. [SEAL.]
PAUL FULLER. [SEAL.]

Sealed and delivered and taken and acknowledged before me this 18th day of March, 1897.

HARMON S. GRAVES,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA, *Southern District of New York*, } *ss:*

Paul Fuller and Frederic R. Coudert, Jr., being severally duly sworn, each deposes and says that he resides in the southern district of New York, and that he is worth the sum of one thousand dollars over and above all his just debts and liabilities and property exempt by law from execution.

FREDERIC R. COUDERT, JR.
PAUL FULLER.

Sworn to before me this 18th day of March, 1897.

HARMON S. GRAVES,
Notary Public, N. Y. Co.

The foregoing is approved of as to form, amount, and sufficiency of sureties.

Dated Washington, March 26th, 1897.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Endorsed:) Supreme Court of the United States. Charles Coudert, administrator, against United States. Bond on writ of error. Coudert Brothers, attorneys for plaintiff, 100 Broadway, New York. United States circuit court of appeals, second circuit. Filed Apr. 1, 1897. James C. Reed, clerk.

41 UNITED STATES OF AMERICA, *ss:*

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the second circuit, wherein Charles Coudert, as ancillary executor of the last

will and testament of Raphael Madrazo, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 26th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

42 [Endorsed:] A copy of the within paper has been this day received at this office. Apr. 1, 1897. Wallace Macfarlane, U. S. attorney. United States circuit court of appeals, second circuit. Filed Apr. 1, 1897. James C. Reed, clerk. Ap'l 26.

Service is hereby admitted of a copy of the within.
April 1, 1897.

——— ———.

Endorsed on cover: Case No. 16,580. U. S. C. C of appeals, 2nd circuit. Term No., 15. Charles Coudert, as ancillary executor of the last will & testament of Raphael Madrazo, deceased, plaintiff in error, *vs.* The United States. Filed May 5th, 1897.